

*United States Court of Appeals
for the Second Circuit*



APPENDIX

B
P/S

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

UNITED STATES OF AMERICA,

Appellee,

-against-

No. 74-1729

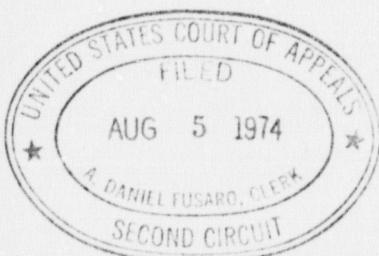
THOMAS COURTNEY COOK,

Defendant-Appellant.

-----x

ON APPEAL FROM THE DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

APPENDIX



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PAGINATION AS IN ORIGINAL COPY

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TITLE OF CASE		ATTORNEYS	
THE UNITED STATES		For U.S.:	
v.s.		James M. Sullivan, Jr. Numford	
THOMAS COURTRAY COOK c/o Millie Cook, 100 Madison Place, Apt 2-C Staten Island, NY 10302			
Mohawk Nation Akwesasne via Roosevelt Town, NY 13683			
		For Defendant:	
		Robert Timothy O'Gorman Michael Poller Karpatskin, Olrenstein & Karpatskin 1345 Ave of Americas, NY 10019	
STATISTICAL RECORD		COSTS	DATE
J.S. 2 mailed	Clerk		
J.S. 3 mailed	Marshal		
Violation	Docket fee		
Title			
Sec.			
DATE 1972 Dec 21	PROCEEDINGS		
1973 Jan 15	Filed Indictment-viol; 50 USC app 462-failure to report for and submit to induction - 1 ct		
Mar 5	Address: Mohawk Nation Akwesasne, via Roosevelt Town, NY 13683		
May 3	Adjourned to Mar 19 at request of deft The defendant is arraigned and pleads not guilty. 20 days to file motions. released on own recognizance. Signed bail form.		
June 11	Filed Notice of Motion to Dismiss Indictment Returnable 6/18/73 Filed Memorandum of Law in Support of Motion to Dismiss Indictment		
June 18	Motion to dismiss-adj to 7/27		
July 27	Motion to dismiss-adj to Sept 17 by consent, time excluded		
Aug 20	Filed Govt's readiness for trial		
Sept 17	Motion to dismiss adj to Oct 1 by consent, time excluded		
Oct 1	Motion for Bill of particulars motion granted Motion for discovery adj to Oct 15 5a.m. open		
Nov 5	Motion to dismiss, adj to Nov 5 by consent		
Nov 26	Motion to dismiss, adj to Dec 3 by consent Filed Memorandum in opposition to deft's motion to dismiss Indictment		

DATE	PROCEEDINGS
Jan 25	Filed Judge Foley's Memorandum-Decision and Order denying dismissing Indictment
Feb 4	Filed Def't's trial memorandum
Mar 5	Ready for trial
Apr 4	Filed def't's waiver of trial by jury
Apr 4	Trial moved by US Atty. Mr. Mumford opens for Govt Mr. Delibert opens for def't
	Briefs to be filed by Apr 17, originals to Clerk, copy to Judge, 3 days to reply Decision reserved
Apr 5	Filed Judge Foley's Memorandum-Decision and Order denying dismissal of indictment Presentence investigation ordered. Sentence deferred. Released on own recognizance.
May 20	The Court advised the defendant of his right to speak in his own behalf, defendant spoke, his attorney spoke. Defendant is adjudged a Young Adult Offender under TIA Sec. 4209. Imposition of any prison sentence is suspended and defendant is placed on probation for a period of two years under TIA USC Sec. 5010(a) of the NYCA, with the special condition that he perform volunteer work contributing to the National interest as directed by the Probation Officer, with the approval of the Court.
	JTF JSS
	Filed Notice of Appeal, copy to US Atty, copy of docket sheet and Appeal sent to CCA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

A3

UNITED STATES OF AMERICA

-v-

THOMAS COURTNEY COOK

INDICTMENT

CN. NO. 2-21-377

(VIO: Title 50, U.S.C.,
Appendix, Section 462)

COUNT I

THE GRAND JURY CHARGES:

That on or about the 22nd day of September, 1970,
at Malone, in the State and Northern District of New York,
THOMAS COURTNEY COOK, the defendant herein, wilfully and
knowingly did fail and neglect to perform a duty required
of him under and in the execution of the Military Selective
Service Act of 1967, and the rules, regulations and
directions duly made pursuant thereto, in that he did
fail and neglect to comply with an order of Local Board
No. 41, Malone, New York, to report for and submit to
induction into the armed forces of the United States.

In violation of Title 50, United States Code,
Appendix, Section 462.

A TRUE BILL

John S. Schreyer
FBI - Malone

John S. Schreyer
UNITED STATES ATTORNEY

CLASSIFICATION QUESTIONNAIRE A4

Local Board No. 41
DATE QUESTIONNAIRE RETURNED

LOCAL BOARD NO. 41
POST OFFICE BLDG.
MALONE
NEW YORK 12953

(Local Board Stamp)



Date of Mailing MAY 19 1966

Malone
New York 12953
5/10/66

COMPLETE AND RETURN BEFORE 5/20/66

1. Name of Registrant

Cook Thomas

Courtney

2. Selective Service No.

(Last)

(First)

(Middle)

30 41 43 101

3. Mailing address

R.F.D. # 1, Route 37

Bombay

Fr. N.Y. 12914

(Number and street or R.F.D. route)

(City, town, or village)

(County)

(State)

(Zip code)

(The above items, except the date received back at local board, are to be filled in by the local board clerk before the questionnaire is mailed.)

INSTRUCTIONS

The law requires you to fill out and return this questionnaire on or before the date shown to the right above in order that your local board will have information to enable it to classify you. A notice of your classification will be mailed to you. When the questions in any series do not apply, enter "NONE" or "DOES NOT APPLY."

The law also requires you to notify your local board in writing, within ten days after it occurs, of (1) every change in your address, physical condition and occupational, marital, family, dependency and military status, and (2) any other fact which might change your classification.

Fill out with typewriter or print in ink, except signatures.

James Purcell
Member or Clerk of local board Class

STATEMENTS OF THE REGISTRANT

Confidential as Prescribed in the Selective Service Regulations

Series I.—IDENTIFICATION

1. Name				2. Date of birth
COOK	THOMAS	COURTNEY		APRIL 7, 1947
(Last)	(First)	(Middle)		
3. Other names used (If none, enter "None")				4. Place of birth
NONE				HANOVER NEW HAMPSHIRE
5. (a) Color eyes	(b) Color hair	(c) Height	(d) Weight	6. Citizen or subject of (country)
BROWN	BROWN	6 ft.	177	U.S.A.
7. If naturalized citizen, give date, place, court of jurisdiction and naturalization number				
DOES NOT APPLY				
8. Current mailing address				
R.F.D. # 1, RT. 37		BOMBAY	FRANKLIN	N.Y. 12914
(Number and street or R.F.D. route)		(City, town, or village)	(County)	(State)
(Zip code)				
9. Telephone No. (If none, enter "None")				
A.C. 518 358 - 2575				
10. Social Security No. (If none, enter "None")				
102 38 2236				
11. Name and address of person other than a member of my household who will always know my address				
MR. DENNET ABRAMS, 421 1/2 LANE		CITY # 327 MASSENA, NEW YORK		
(Name)		(Address)		

SSS Form 100 (Revised 9-22-64) Supplies of previous printings shall be used until exhausted.

1. If you are now on or have been separated from active military service enter: (a) Armed Force
 (b) Service number (c) Date of entry
 (d) Date of separation (e) Character of service
 (f) Type of transfer or discharge
2. If you are now a member of a Reserve component (including the National Guard) give: (a) Name and address of unit *DOES NOT APPLY*
 (b) Service number (c) Date of enlistment or appointment
3. If you are now a member of a Reserve Officer Training Corps or any other officer procurement program, state the program, the Armed Force, date of entry, and any identifying number

Series III.—MARITAL STATUS AND DEPENDENTS

(Use Page 6, if necessary)

1. (a) I (check one): have never been married; am a widower; am divorced; am married.
 (b) I (check one if applicable): DO DO NOT live with my wife; if not, her address is *DOES NOT APPLY*.
 (c) We were married at *DOES NOT APPLY*, on (Place) (Date)
2. I have children under 18 years of age of whom live with me in my home.
 (Number) (Number)
3. If you have no child, other than an unborn child, attach a statement from a physician showing the basis for his diagnosis of pregnancy and the expected date of birth. *DOES NOT APPLY*
4. The following other persons are wholly or partially dependent upon me for support:

Name	Dependent	Relationship	Age	Approximate Income (Annual)	Amount Contributed by Me
Name	<i>DOES NOT</i>			\$	\$
Address					
Name				\$	\$
Address					
Name				\$	\$
Address					
Name				\$	\$
Address					

Series IV.—REGISTRANT'S FAMILY

(Use Page 6, if necessary)

List below all the living members of your immediate family who are 14 years of age or over (except those shown in Series III) including your father, mother, brothers, sisters, father-in-law, and mother-in-law.

Relatives	Relationship	Age	Can This Relative Contribute to Support of Claimed Dependents?
Name <i>LOUIS T. COOK</i>			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Address <i>R.F.D. #1 RT. 37 BENTON N.Y. 12914</i>	<i>BROTHER</i>	<i>17</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name <i>MILICENT E. COOK</i>			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Address <i>R.F.D. #1 RT. 27 BEMRAY N.Y. 12914</i>	<i>SISTER</i>	<i>15</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name <i>SHERRIE E. COOK</i>			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Address <i>R.F.D. #1 RT. 27 BEMRAY N.Y. 12914</i>	<i>SISTER</i>	<i>14</i>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Name			<input type="checkbox"/> Yes <input type="checkbox"/> No
Address			<input type="checkbox"/> Yes <input type="checkbox"/> No
Name			<input type="checkbox"/> Yes <input type="checkbox"/> No
Address			<input type="checkbox"/> Yes <input type="checkbox"/> No

* If your answer is "Yes," state extent of ability to contribute in detail on page 6.

A6

Series V.—OCCUPATION DOES NOT APPLY

(Use Page 6, if necessary)

If Engaged in Agriculture, Also Fill in Series VI

1. I am now employed as a (Give full title, for example: construction draftsman, turret lathe operator, engineer, farm laborer, physics teacher, policeman, marriage-license clerk, etc., if unemployed, so state.)
.....
.....
2. I do the following kind of work (Give a brief statement of your duties. Be specific.)
.....
.....
3. My employer is
(Name of organization or proprietor, not foreman or supervisor. Enter "Self" if self-employed.)
.....

whose business is
(Address of place of employment—Street, or R.F.D. Route, City, and State)
.....
(Nature of business, service rendered, or chief product)
.....
4. (a) I have been employed by my present employer since
(Month and year)
(b) I am paid at the rate of \$ Per Hour Day Week Month.
(c) I work an average of hours per week.
5. Other business or work in which I am now engaged is
(Nature of business, if none, enter "NONE")
6. Other occupational qualifications, including hobbies, I possess are
.....
.....
7. My work experience prior to that described in items 1 and 2, this series, is
8. I speak fluently the following foreign languages or dialects
9. I read and write well the following foreign languages or dialects

Series VI.—AGRICULTURAL OCCUPATION DOES NOT APPLY

(Use Page 6, if necessary)

1. I have been engaged continuously in farmwork since
(Month and year)
2. I am (check appropriate box): Sole owner-operator of a farm Joint owner-operator with another Hired manager Cash tenant or renter Standing rent tenant Sharecropper Share tenant Wage hand (hired man) Unpaid family worker.
3. I (check one): AM AM NOT personally responsible for the operation of the farm where I work.
4. The principal crops and livestock of the farm I operate or work on are:

Names of Crops	Acres Devoted to Each	Kinds of Livestock	Number of Each Now on Farm
DOES	Not Applying		

5. Principal products marketed during the last 2 years
6. Total value of products sold from this farm during the last crop year \$
7. The number of year-round workers on this farm is of whom are hired hands.
(Number) (Number)
8. Other farm experience

SCHOLARSHIP AND STIPEND APPLICATION FORM

(Use Page 6, if necessary)

A7

1. I have been a minister of the since
 (Name of sect or denomination) (Month) (Day) (Year)
 and (check one): HAVE HAVE NOT been formally ordained.
2. I was formally ordained at on (date) by
3. I am a student preparing for the ministry pursuing a full-time course of instruction at the OUR LADY OF HOPE MISSION SEMINARY, RUEI, NEW YORK, N.Y. 10032
 (Name and address of theological or divinity school) under the direction of THE MISSIONARY OBLATES OF MARY IMMACULATE (ROMAN CATHOLIC CHURCH)
 (Name of church or religious organization)
4. I am a student preparing for the ministry under the direction of THE MISSIONARY OBLATES OF MARY IMMACULATE
 pursuing a full-time course of instruction at the OUR LADY OF HOPE MISSION SEMINARY, RUEI, NEW YORK, N.Y. 10032
 (Name and address of school) leading to my entrance into OLBATE COLLEGE, 311 MICHIGAN AVE., WASHINGTON, D.C. 20007
 (Name and address of theological or divinity school) in which I have been pre-enrolled.

Series VIII.—CONSCIENTIOUS OBJECTOR DOES NOT APPLY

(DO NOT SIGN THIS SERIES UNLESS YOU CLAIM TO BE A CONSCIENTIOUS OBJECTOR)

I claim to be a conscientious objector by reason of my religious training and belief and therefore request the local board to furnish me a Special Form for Conscientious Objector (SSS Form 150).

(Signature)

Series IX.—EDUCATION

(Use Page 6, if necessary)

1. (a) I have completed years of Grade School, years of Junior High School, years of High School, years of Trade or Business School. I (check one): DID DID NOT graduate from High School.
 (b) I am a full-time student at OUR LADY OF HOPE MISSION SEMINARY and expect to graduate on MAY 22, 1968
 (Name of high school) (Date)
- (c) In Trade or Business School I pursued courses in
2. (a) I have completed years of College, majoring in LATIN at
 (Name and address of institution)
 and (check one): HAVE HAVE NOT received a degree.
 (b) I have received the following degree(s)
 (Degree—Date) (Degree—Date) (Degree—Date)
3. I am a full-time student at OUR LADY OF HOPE MISSION SEMINARY, RUEI, NEW YORK, N.Y. 10032
 (Name and address of institution) majoring in LATIN preparing for ROMAN CATHOLIC PRIESTHOOD
 (Occupation or profession) and expect to receive a degree on June 1, 1969
 (Date)

Series X.—STATEMENT OF ALIEN DOES NOT APPLY

1. I was admitted to the United States for (check one): PERMANENT RESIDENCE TEMPORARY RESIDENCE on
 (Date of entry) May 1, 1964
2. My Alien Registration Number is 15-1214. If you have not been admitted to the United States for permanent residence, enter on page 6 a supplemental statement setting out the date you first entered the United States, with the dates of each subsequent departure and reentry when applicable. Attach copies of documentary evidence in your possession verifying your claimed alien status.

Series XI.—PHYSICAL CONDITION

(Use Page 6, if necessary)

A8

- If you were ever found not qualified for service in the Armed Forces state (a) when
(b) where
- If you have any physical or mental condition which, in your opinion, will disqualify you for service in the Armed Forces, state the condition and attach a physician's statement.....
- If you have ever been an inmate or a patient in a mental or tuberculosis hospital or institution, give the name and address of each hospital or institution and the period of hospitalization.....

Series XII.—COURT RECORD ~~DOES NOT APPLY~~

(Use Page 6, if necessary)

- I (check one): HAVE HAVE NOT been convicted or adjudicated of a criminal offense or offenses, other than minor traffic violations. (If "HAVE" box is checked, complete this series.)

Offense (other than minor traffic violations)	Date of Conviction (Month, Day, Year)	Court (Name and Location)	Sentence
D	Do	Not	6 p.m.

- I (check one): AM AM NOT now being retained in the custody of a court of criminal jurisdiction, or other civil authority. Specify

(Awaiting trial, on probation, on parole, etc.)

Series XIII.—SOLE SURVIVING SON

I (check one): AM AM NOT the sole surviving son of a family of which the father or one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—You are required to make the registrant's certificate. If you cannot read, the questions and your answers shall be read to you by the person who assists you in completing this questionnaire. If you are unable to sign your name, you shall make your mark in the space provided for your signature in the presence of a person who shall sign as witness.

NOTICE.—Imprisonment for not more than 5 years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Universal Military Training and Service Act, as amended.)

I CERTIFY that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief.

5/16/66
(Date)

Registrant
sign here

Thomas Courtney Conk

(Signature or mark of registrant)

(Date)

(Signature of witness to mark of registrant)

If anyone has assisted you in completing this questionnaire, such person shall sign the following statement: I have assisted the registrant herein named in completing this questionnaire because

(For example—registrant unable to read and write English, etc.)

(Signature of person who has assisted)

(Number and Street or R.F.D. Route)

Date

(City)

(State)

(Zip code)

I AM A FULL-TIME STUDENT AT OUR LADY OF HOPE SEMINARY
STUDYING FOR THE ROMAN CATHOLIC PRIESTHOOD UNDER THE DIRECTION
OF THE OBLATES OF MARY IMMACULATE. THEREFORE, I REQUEST A
CLASSIFICATION OF 4-D.

Thomas Courtney C.S.C.

(Signature of Registrant)

5/10/68

(Date)

(6)

650-16-75967-3

Minutes of Actions by Local Board and Appeal Board and on Appeal to the President
 (Continued from Page 9)

A10

Vote

Yes No

6/12/70	Issued order to report for AFPE for 6/22/70.	
6/13/70	See 119, et al. date Re: review for 7/15/70	
6/13/70	See 107 handled	
7/10/70	Sent letter to Richmond College to learn if reg. has rec'd degree.	
7/15/70	107 rec'd v. See 119 rec'd. Did not grad in 6/70 as showed here. See 119 for ex-pl. Reported for AFPE - Expel Grad date 6/70.	
7/16/70	Richmond College advises reg. student at present there. Has completed 76 credits and in order to graduate he must complete 46 credits more.	
7/21/70	Mailed AD #62 - Conceivable XXX	
7/24/70	Class 1A	4 -
7/26/70	#110, 317 C-90. 9 handled.	
8/24/70	SSS Form 252 (Order to Report for Induction) 9/23/70	
9/21/70	Ltr. rec'd from registrant returning his order to report for ind. and listing his reasons why he feels he is no longer legally required to comply with Selective Service regulations.	
9/22/70	Did not report to LB for induction.	
9/24/70	SSS Form 261 (Delivery List) Ind. reg. did not report to AFES for ind.	
9/24/70	Cover Sheet sent HQdtrs. for review under LEM 14.	
10/19/70	Cover sheet sent ad. reg. should be updated to 41 City on 301.	
10/19/70	SSS Form 301 prepared and orig. & 3 copies sent HQdtrs for fwd. to GS HQdtrs.	
5/1/72	File reg. by State HQdtrs. same fwd. today.	

Date	Minutes of Actions by Local Board and Appeal Board and on Appeal to the President	Vote	
		Yes	No
JUN 14 1966	(Class. 4.1)	3	--
6/15/66	#110 mailed		
7/20/67	Mailed Form 127 (Current Information Questionnaire)		
8/8/68	Registrant advised no longer studying for priesthood		
8/12/68	Class 1A	5	--
8/14/68	#110 mailed with #217		
8/26/68	Request for Student Deferment Rec'd		
9/16/68	Mailed Form 223 (Order to Report for AFPE) 9/22/68		
10/8/68	Class & S. 9/1/69 AFPE case EXTENDED DUE DATE 4		--
10/9/68	#110 mailed.		
7/17/69	Reply AFPE & #110 received.		
11/13/69	\$150 fine #109		
11/21/69	109 rec'd.		
NOV 25 1969	Class & S. 9/1/70	3	--
11/26/69	#110 mailed.		
JAN 21 1970	Mailed Form 223 (Order to Report for AFPE) 2/16/70		
1/27/70	Above order came - No rec'd registration.		
MAR 12 1970	Mailed Form 223 (Order to Report for AFPE) 4/26/70		
4/1/70	Let & mailed. Wrote Other Classes for info.		
4/8/70	Remainder orders for AFPE to Ed. Dir. Bombay		
4/24/70	Let & mailed. Rec'd c/o Richmond College		
5/1/70	Wrote Richmond College to determine if registrant still attend.		
5/8/70	Richmond College advises still there. Again wrote registrant req. reply within ten days as to why he did not report for AFPE or transfer.		
5/19/70	Reply rec'd from registrant. WILL comply if new order issued.		

(Continue on Page 7)

GPO : 69-16-75567-1

LOCAL BOARD NO. 42
POST OFFICE BLDG.
MALONE
NEW YORK 12953

(Local Board Stamp)



A12

DATE QUESTIONNAIRE RECEIVED BY LOCAL BOARD
Post Office Bldg.

JUN 3 1970

Malone

(147)

Selective Service No.				Month	Year	Day	Class
30	41	48	101	Apr.	7		2S
				(Month) (Day)			AFPE

Date of Mailing 6/22/70

COMPLETE AND RETURN BEFORE immediately

(The above items, except the date questionnaire returned, are to be filled in by the local board clerk before questionnaire is mailed)

The law requires you to fill out and return this questionnaire on or before the date shown to the right above in order that your local board will have current information to enable it to classify you. When a question or statement in any series does not apply, enter "DOES NOT APPLY," or "NONE"; otherwise complete all series. You may attach any additional information you believe should be brought to the attention of the local board. After completing the statements be sure to date the form and sign your name. FILL OUT WITH TYPEWRITER, OR PRINT IN INK.

Debbie Westfall

(Member, Executive Secretary, or Clerk of Local Board)

STATEMENTS OF THE REGISTRANT

CONFIDENTIAL AS PRESCRIBED IN THE SELECTIVE SERVICE REGULATIONS

Series I.—MAILING ADDRESS

1. Name(s) and address(es) of person(s) other than a member of your household who will always know your address MILLIE COOK 100 HAMILTON PL. APT 2-C STATION 10302 100 HAMILTON PL. APT 2-C STATION 10302 100 HAMILTON PL. APT 2-C STATION 10302
2. My current mailing address is 100 HAMILIE COOK 100 HAMILIN PL. APT 2-C STATION 10302
3. My telephone number (home or business) is 212-481-3111 (ZIP code)

Series II.—MARRITAL STATUS AND DEPENDENTS

1. (Check one) HAVE NEVER BEEN MARRIED AM A WIDOWER
- AM MARRIED AM DIVORCED

(b) I (Check one) DO DO NOT live with my wife; if not, her address is

- (c) We were married at _____ on _____ (Date)
2. (a) I have the following children under 18 years of age who live with me in my home:
Name _____ Age _____ Name _____ Age _____
Name _____ Age _____ Name _____ Age _____
(b) If you have no child other than an unborn child, attach a statement from a physician showing the basis for his diagnosis of pregnancy and the expected date of birth.
3. I (Check one) DO DO NOT have dependents other than those listed above.

Series III.—MILITARY RECORD

1. If you are now on or have been separated from active military service enter (a) Armed Force _____
(b) Service number _____ (c) Date of entry _____
(d) Date of separation _____ (e) Type of separation _____
2. If you are now a member of a reserve component (including the National Guard) give (a) Name and address of unit _____
(b) Service number _____ (c) Date of enlistment, transfer, or appointment _____
3. If you are now a member of a Reserve Officer Training Corps or any other officer procurement program, describe fully _____

1. I am now employed as a (give full title; for example, bricklayer, farmer, teacher, auto mechanic, steel worker). If not employed, so state) _____
2. I do the following kind of work. (Give a brief statement of your duties. Be specific) _____
3. My employer is _____
(Name of organization or proprietor, not foreman or supervisor, enter "Self" if self-employed)

(Address of place of employment—Street, or R.F.D. Route, City, and State)
- whose business is _____
(Nature of business, service rendered, or character of product)
4. I have been employed by my present employer since _____
(Month and year)
5. Other occupational qualifications, including hobbies, I possess are _____
6. I speak fluently the following foreign languages or dialects _____
7. I read and write well the following foreign languages or dialects _____

Series V.—EDUCATION

1. (a) Grade or year completed (Line through all grades or years successfully completed) (Exclude trade or business schools)	Elementary and High School												College				Post Graduate					
	None	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	1	2	3	4	5
(b) I graduated from high school in (month) <u>6</u> (year) <u>66</u>																						
2. (a) I have completed <u>2</u> years of college, majoring in <u>THEOLOGY, BACHELOR OF SCIENCE</u> , now <u>ASSISTANT</u> at <u>RICHMOND COLLEGE</u> , and (check one) <input type="checkbox"/> HAVE <input checked="" type="checkbox"/> HAVE NOT received a degree. (b) I have received the degree(s) of <u>ASSOCIATE OF ARTS</u>																						
3. (a) I am a full-time student in (check one) <input type="checkbox"/> High School <input type="checkbox"/> Trade School <input type="checkbox"/> Business School <input checked="" type="checkbox"/> College <u>RICHMOND COLLEGE, 100 STUDENTS RD., STATION NO. 102</u> (Name and address of institution)																						
majoring in <u>ARTHROPATHY</u> preparing for <u>TEACHING, SECONDARY, OK.</u> (Occupation or profession)																						
and expect to (check one) <input type="checkbox"/> finish course on <input checked="" type="checkbox"/> complete degree requirements on <u>5/1/72</u> (Date)																						
(b) I will be a full-time student next semester at <u>RICHMOND COLLEGE</u>																						

Series VI.—COURT RECORD

1. If you have been convicted or adjudicated of a crime or crimes other than minor traffic violations complete this series. If none enter "NONE."

Offense (other than minor traffic violations)	Date of Conviction (Month, Day, Year)	Court (Name and Location)	Sentence
<u>NONE</u>			

2. I (Check one) AM AM NOT now being retained in the custody of a court of criminal jurisdiction, or other civil authority. Specify _____
(Awaiting trial, on parole, etc.)

Series VII.—PHYSICAL CONDITION

1. If you were ever rejected for service in the Armed Forces state (a) when _____
(b) where _____
2. If you have any physical or mental condition which, in your opinion, will disqualify you for service in the Armed Forces, state the condition and attach a physician's statement if not previously submitted.
3. If you have ever been an inmate or a patient in a mental or tuberculosis hospital or institution, give the name and address of each _____

Series VIII.—SOLE SURVIVING SON

- I (Check one) AM AM NOT the sole surviving son of a family of which the father or one or more sons or daughters were killed in action or died in line of duty while serving in the Armed Forces of the United States or subsequently died as a result of injuries received or disease incurred during such service.

Notice.—Imprisonment for not more than 5 years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification.

REMEMBER TO DATE AND SIGN BELOW

JULY 14 1970

(Date)

Thomas C. Cooke

(Registrant's signature)

SELECTIVE SERVICE SYSTEM
REPORT OF INFORMATION

SELECTIVE SERVICE or STANDBY RESERVE NO.			
30	41	43	101
Class or Category			

LOCAL BOARD NO. 48
POST OFFICE BLDG.
MALONE
NEW YORK 12000

(Local Board Stamp)

INFORMATION RECEIVED BY PERSONAL VISIT TELEPHONE MAIL

1. Name (Last, First, Middle)

Cook, Thomas J.

2. Date of Birth

3. Present Mailing Address

4. New Information (marriage, employment, dependency; death of registrant, reservist, or claimed dependent)

Started college 9/66; at Our Lady of Hope Seminary, Newburgh, N. Y. until 6/68. 9/68 entered Richmond College with 54 credits allowed by Richmond in transferring. I am still there. In 1/70 I changed my major from sociology to a major of anthropology with teacher education. In doing this I lacked credits in anthropology and I had none of the teacher education credits that I should have had by my third year. I am not in summer school and I expect my graduation date to be 6/72.

5. Source of Information

Registrant
 Employer

Relative
 Other (Indicate) Thomas C. Cook

Signature

James RusbyEnc. Sec.

Date

7/13/70

RICHMOND COLLEGE of The City University of New York
 130 Stuyvesant Place, Staten Island, New York, New York 10301

212/448-8433



Office of the Registrar

July 13, 1970

Local Board No. 41
 Post Office Bldg.
 Malone, N. Y. 12953

Gentlemen:

In reply to your letter of July 10, 1970, Thomas C. Cook is a student of Richmond College at present. He has completed 76 credits. In order for him to graduate he must complete 46 credits more.

Sincerely,

Ruth Uslan
 Ass't. Registrar

Local Board No. 41
 Post Office Bldg.

JUL 12 1970

Malone
 New York 12953

RU/mr

E

EXECUTIVE SERVICE CENTER

A16

LOCAL BOARD NO. 41
POST OFFICE BLDG.
MALONE
NEW YORK 12953

(Local Board Stamp)

July 22, 1970

Registrant: Thomas C. Cook
SS No. : 30-41-40-101 (147)

Dear Sir:

Attached is Notice of Classification (SSS Form 110) indicating that you have been classified in Class I-A by this local board.

Although the local board has determined that you do not qualify for a deferment in Class II-S as a student, you may qualify for a I-S(C) classification (statutory student deferment). Selective Service Regulations provide that any registrant who while satisfactorily pursuing a full-time course of instruction at a college, university or similar institution of learning and during his academic year at such institution is ordered to report for induction shall be classified in Class I-S(C) except that no registrant may be placed in Class I-S(C) under the provisions of this paragraph;

(1) who has previously been placed in Class I-S thereunder or;
(2) who has been deferred as a student in Class II-S and has received his baccalaureate degree;

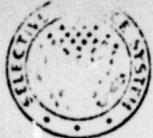
A registrant who is placed in Class I-S under the provision of this paragraph shall be retained in Class I-S;

(1) until the end of his academic year or;
(2) until he ceases satisfactorily to pursue such course of instruction, whichever is the earlier.

If you qualify for the I-S(C) classification when reached for induction, the local board will mail you a letter with your induction order advising you that the induction order will be cancelled and that you will receive the I-S(C) classification until the end of your current academic year, or until you cease to satisfactorily pursue such course of instruction whichever is the earlier. It should be emphasized that the I-S(C) classification can be granted only once.

By Direction:
Local Board No. 41

Charles P. L. Jr.
Signature: Executive Secretary



ORDER TO REPORT FOR INDUCTION

A17

The President of the United States,

To

Thomas C. Cook
c/o Millie Cook
100 Hamlin Pl., Apt. 2 C
Staten Island, N. Y. 10302

LOCAL BOARD NO. 41
POST OFFICE BLDG.
MALONE
NEW YORK 12953

(LOCAL BOARD STAMP)

Aug. 24, 1970

(Date of mailing)

SELECTIVE SERVICE NO.

(147) 30 41 43 101

GREETING:

You are hereby ordered for induction into the Armed Forces of the United States, and to report at Rm. 203, Post Office Bldg., Malone, N. Y.

(Place of reporting)

on Sept. 22, 1970 at 7:00 a.m. PLEASE BE PROMPT.

(Date)

(Hour)

for forwarding to an Armed Forces Induction Station.

J. C. Cook, Jr.
(Member, Executive Secretary, or clerk of Local Board)

IMPORTANT NOTICE
(Read Each Paragraph Carefully)

If you are so far from your own local board that reporting in compliance with this Order will be a serious hardship, go immediately to any local board and make written request for transfer of your delivery for induction, taking this Order with you.

IF YOU HAVE HAD PREVIOUS MILITARY SERVICE, OR ARE NOW A MEMBER OF THE NATIONAL GUARD OR A RESERVE COMPONENT OF THE ARMED FORCES, BRING EVIDENCE WITH YOU. IF YOU WEAR GLASSES, BRING THEM. IF MARRIED, BRING PROOF OF YOUR MARRIAGE. IF YOU HAVE ANY PHYSICAL OR MENTAL CONDITION WHICH, IN YOUR OPINION, MAY DISQUALIFY YOU FOR SERVICE IN THE ARMED FORCES, BRING A PHYSICIAN'S CERTIFICATE DESCRIBING THAT CONDITION, IF NOT ALREADY FURNISHED TO YOUR LOCAL BOARD.

Valid documents are required to substantiate dependency claims in order to receive basic allowance for quarters. Be sure to take the following with you when reporting to the induction station. The documents will be returned to you. (a) FOR LAWFUL WIFE OR LEGITIMATE CHILD UNDER 21 YEARS OF AGE—original, certified copy or photostat of a certified copy of marriage certificate, child's birth certificate, or a public or church record of marriage issued over the signature and seal of the custodian of the church or public records; (b) FOR LEGALLY ADOPTED CHILD—certified court order of adoption; (c) FOR CHILD OF DIVORCED SERVICE MEMBER (Child in custody of person other than claimant)—(1) Certified or photostatic copies of receipts from custodian of child evidencing serviceman's contributions for support, and (2) Divorce decree, court support order or separation order; (d) FOR DEPENDENT PARENT— affidavits establishing that dependency.

Bring your Social Security Account Number Card. If you do not have one, apply at nearest Social Security Administration Office. If you have life insurance, bring a record of the insurance company's address and your policy number. Bring enough clean clothes for 3 days. Bring enough money to last 1 month for personal purchases.

This Local Board will furnish transportation, and meals and lodging when necessary, from the place of reporting to the induction station where you will be examined. If found qualified, you will be inducted into the Armed Forces. If found not qualified, return transportation and meals and lodging when necessary, will be furnished to the place of reporting.

You may be found not qualified for induction. Keep this in mind in arranging your affairs, to prevent any undue hardship if you are not inducted. If employed, inform your employer of this possibility. Your employer can then be prepared to continue your employment if you are not inducted. To protect your right to return to your job if you are not inducted, you must report for work as soon as possible after the completion of your induction examination. You may jeopardize your reemployment rights if you do not report for work at the beginning of your next regularly scheduled working period after you have returned to your place of employment.

Willful failure to report at the place and hour of the day named in this Order subjects the violator to fine and imprisonment. Bring this Order with you when you report.

c/o Millie Cook
100 Hamlin Pl., Apt 2-C
Staten Island, NY 10302
9/15/70

Local Board #41

Post Office Bldg.

Malone, NY 12953

Local Board No. 41
Post Office Bldg.

SEP 22 1970

Malone
New York
12953

Gentlemen,

Enclosed is my notice of induction into the armed services of the United States. With it I wish to present to you the following facts of my life and present situation, which exclude me from the draft laws of the United States.

I am a North American Indian, a member of the reservation known to the Canadian Government as the Iroquois of St. Regis at St. Regis, Quebec, and I can trace my ancestry there continuously to before the Revolutionary War. My mother was an Indian from Caughnawaga, Quebec, an Iroquois reservation near Montreal. My father, a United States Marine Corps officer and fighter pilot, was killed in active duty when I was four years of age; and though it was said that he was a great man, I never knew him. My childhood was spent both at Caughnawaga and St. Regis (mainly the American portion of the reserve) and I attended grade school in Fort Covington, N. Y. When I was thirteen I was sent to a Catholic seminary high school, as my mother was physically too weak to care for all of us at home. Two years later she died, of a bad heart that had kept her weak all her life. As an orphan I was cared for, during the summer and other vacations, by my grandmother who resided on the American portion of the reservation. It was during this time, when I was in the seminary that I registered for Selective Service, believing that it was necessary for me to do so. When I left the seminary, and after my grandmother's death two years ago, being of age and self-supporting, I returned to reside on the Canadian portion of the reservation.

As I above stated, I am a member of the Canadian portion of St. Regis Indians, residing on the Canadian side of the reserve. If, for your satisfaction, this will necessitate renouncing the American citizenship that it appears I have, then let it be done.

Under provisions of the Jay Treaty of the United States with Great Britain, North American Indians are entitled to pass freely across the international border, and many of our people do so for education, employment, and other reasons.

These past two years, as a man of legal age, I have used my privileges under the Jay Treaty to make temporary visits into the United States for education at Richmond College in New York, and for employment as a structural ironworker all over the north-eastern States. I am a member of the International Association of Bridge, Structural & Ornamental Ironworkers, and belong to local 711 of Montreal, Quebec. During these times in the States I returned regularly to my residence in St. Regis, Quebec, often weekly and always frequently. I continue to reside at St. Regis, Quebec, and am not there for purposes of evading the draft, as even now I am working in New York City.

Since it is no longer legally necessary for me to comply with Selective Service regulations, I request that you cancel my notice for induction, and my Selective Service number.

I would appreciate your cooperation in handling this, as it is not my wish to go against your regulations, nor to stir up difficulties between your government and the Canadian Government.

very respectfully,

Thomas Cook

Local Board No. 41
Post Office Bldg.

SEP 21 1970

Malone
New York 12953

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 - - - - -
4 UNITED STATES OF AMERICA,
5 - - - - -

6 - - - - -
7 - against -
8 - - - - -

9 - THOMAS COURTNEY COOK
10 - - - - -

11 - - - - -
12 72-CR-311
13 - - - - -

14 The following proceedings took place on
15 the 4th day of April 1974, at the United States
16 District Court, Federal Building, Albany, New York,
17 before HONORABLE JAMES T. FOLEY, United States
18 District Judge.

19 APPEARANCES:

20 HONORABLE JAMES M. SULLIVAN, JR.
21 United States Attorney
22 MIRIAM THOMPSON
23 Assistant United States Attorney
24 Of Counsel
25 Attorney for U. S. of America
Federal Building
Albany, New York

KARPINSKI, KARPINSKI & KARLSON, ESQ.
26 STEPHEN TEPFERMAN, ESQ.
27 Of Counsel
28 Attorney for Defendant
29 1345 Avenue of the Americas
New York, New York 10019

DEFENDANT IN PERSON

1 we are going to be referring to, and I have prior
2 to trial given a copy of the summary to Mr. Deli-
3 bert.

4 THE COURT: All right. They are very
5 helpful in selecting the parts of the file that
6 may be important.

7 BY MR. MUMFORD:

8 Q Did there come a time when Mr. Cook registered with
9 Local Board 41?

10 A Yes.

11 Q And could you tell us when that was?

12 A He registered on April 11, 1966.

13 Q And to what are you referring now?

14 A I am referring to his registration card.

15 Q And on that registration card --

16 THE COURT: What date was that?

17 THE WITNESS: April 11, 1966.

18 THE COURT: Thank you.

19 BY MR. MUMFORD:

20 Q Is that registration card signed by the registrant?

21 A Yes it is.

22 Q And is that in the ordinary course, having the
23 registrant sign a card?

24 A Yes.

25 Q Is there an indication on that card as to the date

2 A APRIL 7, 1948.

3 Q And place of birth?

4 A Hanover, New Hampshire.

5 Q. And the date of registration is given as -

6 A April 22, 1966.

7 Q And is there an indication on there as to the reg-
8 istrant's residence, place of residence?

A Route 1, R. D. #2, Route 37 Domby, Franklin County
New York.

11 Q Did the registrant complete a classification ques-
12 tionnaire?

13 A Yes he did.

14. *De novo* NMR spectra from H_2O and D_2O

15 A Yes 7.69.

Q And reading from that classification questionnaire,
which is marked Item 2, is that correct?

18 A Yes.

19 Q Would you read please, there is an indication there
20 as to the date of birth?

21 A. An enquiry was made of a date of March 1964 to 7 March

22 3 Place of Birth?

25 Hanover, New Hampshire.

Q And under item saying "citizen or subject of one's
country?"

1 A U.S.A.

2 Q And is that classification questionnaire, is that
3 executed by the registrant?

4 A Yes it was, and signed by him.

5 Q And did there come a time when the registrant was
6 ordered for an armed forces physical examination?

7 A Yes he was.

8 Q And when was that?

9 A He was ordered several times, the ultimate order
10 for the completion of this examination was mailed
11 from the local board office on June 22, 1970.

12 Q Could you tell me what item you are referring to
13 please?

14 THE COURT: Is that July or June?

15 THE WITNESS: June 22, 1970 was the date
16 of issuance.

17 THE COURT: Thank you.

18 THE WITNESS: It was called an order to
19 report for armed forces physical examination.

20 BY MR. KUHFOLD:

21 Q And ordered to report on what date?

22 A He was ordered to report for July 15, 1970.

23 Q And that comes from item number what in the file?

24 A Item No. 37.

25 Q And did there come a time when the registrant

1 Board.

2 MR. BROWNE: Thank you, Miss Cullen.

3 I have no further questions.

4 REDIRECT EXAMINATION

5 BY MR. MONFORD:

6 Q May I direct your attention please to Item 23 and
7 ask you if you will please tell me what that is?

8 A This is a Selective Service form, college student
9 deferment, which was used by the colleges in which
10 they would certify the status of a student at their
11 institution for the local boards.

12 Q And does that indicate on that when the last number
13 referred to both began and ended?

14 A Yes.

15 Q Would you tell us what those dates were?

16 A They certified that his semester started on January
17 - 2, 1970 and that it ended on or about June 1, 1970.

18 Q And I direct your attention to Item No. 20.

19 A Yes.

20 Q Is that another student certificate also from the
21 same school?

22 A Yes it is.

23 Q And would you tell us the beginning and ending
24 dates referred to by the school?

25 A In this particular college student certificate,

1 they were certifying that the academic year began
2 9/15 1969 and ended on or about June 1970.

3 MR. DELMONTI: Objection, Your Honor,
4 I see no reference to academic year any place in
5 this document. I would like to know from what the
6 witness is testifying.

7 THE COURT: All right, Miss Cullinan, did
8 you read from that item 20, is that interpretation
9 of it?

10 THE WITNESS: This form was designed,
11 sir, to identify a student in college, the level
12 of instruction, and the beginning and ending dates
13 of a particular year in order that the local boards
14 might classify a registrant accordingly.

15 THE COURT: But are the words "academic
16 year" in the document?

17 MR. THOMPSON: No, Your Honor, to answer
18 if I may, it refers to the "four year class" which
19 commenced on 9/15/69 and is expected to receive
20 a degree on or about June of 1970.

21 THE COURT: All right, with that correc-
22 tion does that satisfy you?

23 MR. DELMONTI: Yes, Your Honor.

24 BY MR. THOMPSON:

25 Q And I direct your attention to item No. 16 and

1 you if that item indicates that the third class
2 year commences on September 16, '68?

3 A Yes it does.

4 Q And item No. 12?

5 A Yes.

6 Q Does that indicate that the academic period that
7 they are talking about there commences September of
8 1968?

9 A Yes it does.

10 Q And now I direct your attention to item No. 46 --
11 excuse me, may I withdraw that, to item No. 7.

12 A Yes.

13 Q And does that indicate that the sophomore year
14 there commences in September of '67 and ends in
15 June of '68?

16 A Yes it does.

17 Q I ask you to refer to item 46 please, and would
18 you tell us what item 46 is?

19 A This is a report of information that was placed
20 in the registrant's file by the executive secretary
21 and signed by Mr. Cook.

22 Q Does that indicate the source of the information
23 contained on this report of information?

24 A Yes it does.

25 Q What was the source of the information?

1 A This is information that Mr. Cook gave Mrs. Rutherford concerning his college status.

2 Q And he signed it, is that correct?

3 A Yes he did.

4 Q And would you read us the date of that?

5 A This is dated July 15, 1970.

6 Q And would you read the last sentence please of
7 that report of information?

8 "I am not in summer school and I expect my gradu-
9 ation date to be June '72."

10 Q And is that the same summer in which the induction
11 notice was sent?

12 A Yes.

13 MR. WILDFORD: I have no further question.

14 MR. DELISLE: No recess, Your Honor.

15 THE COURT: You are excused.

16 (Witness excused.)

17 MR. WILDFORD: The Government rests...
18 case, Your Honor.

19 THE COURT: All right. Mr. Delisle?

20 MR. DELISLE: Your Honor, at this time
21 the defense would respectfully move for an acquittal.
22 On the grounds the Government has not presented
23 a prima facie case. We would further respectfully
24 renew our motion for an acquittal and for discharge.

I returned regularly to my residence in St. Regis, Quebec, often weekly and always frequently. I continue to reside at St. Regis, Quebec, and am not there for purposes of evading the draft, as even now I am working in New York City.

Since it is no longer legally necessary for me to comply with Selective Service regulation, I request that you cancel my notice for induction and my Selective Service number.

I would appreciate your cooperation in handling this, as it is not my wish to go against your regulations nor to stir up difficulties between your government and the Canadian government. Very respectfully," My signature.

Q Thank you, Mr. Cook, and did the Selective Service System, the Local Board, comply with your request to cancel your notice of induction or to cancel your Selective Service number?

A No, they didn't.

Q Referring to the statement in your letter "I am a North American Indian" at the beginning of the second paragraph, is that statement in fact true?

A Yes, I am a native North American individual.

Q And are you a member of any particular tribe or nation?

COOK-DIMMICK

1 A Yes, I belong to the Wolf people, the Wolf group
2 of the Mohawk Indian nation.

3 Q And is the Mohawk Indian nation a portion in any
4 way of any larger group of nations or tribes?

5 A No, the nation, itself -- they are related closely
6 though to the other Iroquois peoples, which is com-
7 posed also of five other nations of which Mohawk
8 is just one.

9 Q And are you, Mr. Cook, a full-blooded Indian?

10 A For the past four or five generations there has
11 been two ways among our people of accounting for
12 such things. There has been an American way and
13 our own way. In the American way, I am not a full-
14 blooded Indian, in the American way there are some
15 four or five individuals stretching all the way
16 back from the 1700's to the 1800's. There were
17 four or five individuals who were not Mohawk.
18 They were not Indian people, they were young people
19 who in the beginning times came, they were captured,
20 taken during war from time to time, and as is the
21 the custom of the Iroquois peoples, those captives
22 were brought up, they were part of the people, like
23 they were taken into the families, and so in the Ameri-
24 can way, I am mostly Mohawk Indian blood, but in
25 our own way, in the Iroquois way whether or not

COOK-DETER

1 you are a Mohawk Indian doesn't even depend upon
2 any kind of blood, it depends totally upon whether
3 or not you have a clan, that is, whether you belong
4 to the group, so one of the three groups that com-
5 prise the Mohawk nation, and that is counted
6 through your Mother, and I am a Wolf clan because
7 my mother belonged to that clan, because her mother
8 and her mother's mother on back for many hundreds
9 of years, even to hundreds of generations, they
10 were Wolf clan people. So in our own way, I am
11 a full Mohawk Indian.

12 Q. Mr. Cook, I am not asking you for a Lawyer's an-
13 swer or a legal answer to this, I am asking you
14 what you personally believed, do you consider your-
15 self to be a citizen of the United States?

16 A. No, I am not a citizen of the United States or
17 America people.

18 Q. Do you consider yourself a citizen or subject of
19 any other nation?

20 A. I am solely a citizen of the Mohawk nation, but I
21 should say also that I am eligible and I understand
22 the benefits accorded from taking on the citizen-
23 ship of either the United States or of Canada,
24 because I am eligible in Canadian law to be a
25 Canadian Indian, and I am eligible in American law

1 to be an American Indian, but in fact I am not.
2 I am a Mohawk Indian.

3 Q. Does your status, Mr. Cook, your belief that you
4 are in fact a Mohawk Indian and not a citizen of
5 the United States, have any implications in what
6 you believe you must do in relation to the United
7 States or Canadian government?

8 MR. MURFORD: Objection, Your Honor.

9 THE COURT: All right, sustain, the form
10 isn't too good. Was that the reason you sent back
11 your induction order?

12 THE WITNESS: Yes it was, sir.

13 THE COURT: That you believed that you
14 were a Mohawk Indian and not subject to the Selective
15 Service Act?

16 THE WITNESS: Yes, since I was a small
17 boy, I have always been brought up with that, be-
18 cause it happened that the family that I am a part
19 of, they always told me that.

20 THE COURT: Now did you happen to register
21 or not?

22 THE WITNESS: The main responsibility and
23 the control over the time I registered when I be-
24 came 18 years of age, was on the part of the par-
25 ticular man, Father Schmid who was the registrant.

1 where I was, I remember telling him that I wasn't
2 sure that I should do any of this because we are
3 Indians, but I remember him laughing and say that
4 that is all in the past and there is nothing about
5 it, and that of course you are required to do this,
6 and so I did. It was at his instruction that I
7 did that.

8 BY MR. DEMILLETT:

9 Q Mr. Cook, aside from your registration in Selective
10 Service and the events that has led to such an this
11 trial, have you had any other official dealings
12 with the United States Government, for instance,
13 have you ever obtained a United States passport?

14 A No, we have our own government and we have all that
15 is required on our lands and in our own country to
16 do the things that is required and is done, does not
17 Mohawk individuals.

18 Q Have you ever traveled to Europe, Mr. Cook?

19 A Yes I have.

20 Q And what admitted you to countries in Europe?

21 A Yes I was.

22 Q Did you have a United States passport at that time?

23 A No, I had been issued a Mohawk Nation passport,
24 we had an invitation to attend the United Nations
25 conference on the Human environment in June 1972

1 in Stockholm, Sweden, and when I got the invitation
2 I took it to the Mohawks-- to the long house council
3 which is the traditional leadership on the reserva-
4 tion where I come from, and I told them I would
5 like to go and what should I do for a passport,
6 and they appointed a committee to put together a
7 nation passport, the kind of which has been used
8 by Iroquois peoples since the time it became neces-
9 sary for passports for world travel, and so I used
10 the Mohawk nation passport which was acceptable
11 to the countries that I was traveling in.

12 Q And were you, in fact, admitted to both Sweden and
13 Denmark by showing your Iroquois passport?

14 A Yes.

15 Q Mr. Cook, were you ever -- did you ever vote or
16 register to vote in any government, I am asking,
17 United States election, whether national, state or
18 or local?

19 A No, in neither the United States or Canadian areas.

20 Q Have you participated in any way in the government
21 of the Mohawk nation?

22 A Yes, and have been since the last five or six
23 years.

24 Q Mr. Cook, so far as you are aware, are you the only
25 Mohawk or the only Iroquois or the only Indian who

GOOK-SHIEGE

20

1 believes that by virtue of your birth and citizenship
2 as a Mohawk you are not a citizen of the United
3 States?

4 MR. MUMFORD: Objection.

5 THE WITNESS: No, I am not.

6 THE COURT: Well, it is objectionable.

7 I will sustain it. I don't think it makes any
8 difference what the others think. We are looking
9 for his belief, his intent.

10 MR. DUNNEDIN: But I would like to demon-
11 strate, Your Honor, that this is not something that
12 he has dreamed up out of his own head, I would like
13 to demonstrate that there is a body of thought at
14 least within the Mohawk nation that these are the
15 obligations and duties of a Mohawk person.

16 THE COURT: All right, you particular.
17 I will take it. Tell us about it.

18 THE WITNESS: There are many Indian
19 people, Iroquois people, Mohawk people, who can
20 not, you must understand, Iroquois people any more,
21 they have become Catholic people, American people,
22 and they fully participate in all of what that
23 means, but there has always been amongst our reservation,
24 within our reservation families who are
25 the traditionalists, those Mohawks who have

continued through all the generations to maintain
that they are Mohawk people and to keep the Mohawk
fire, is what it is called, going. It is a matter
of Mohawk law that at any time any individual has
the sovereign freedom to get up and leave the fire,
walk away from the long house, and in just exactly
that same way, anybody at any time, any Mohawk in-
dividual can come back and take his place that is
being saved for him through all the generations,
there is a place that is saved for those who have
left the Mohawk ways, and simply that is what I
did in terms of Mohawk law, was to fully go back
or fully take the place that was saved for this
generation at the Mohawk Fire, and all these ways
is not something that is recent or that has just
started, it is ways that are very old in North
America, and so old in fact that they belong to
North America, and that all of the laws, the federal
constitution which Iroquois people have had for
about the last 300 years, is all closely, so closely
ly a part of everything, all of the relationships
of life that exist here in North America, the trees
and all the nations of animal peoples, the winds,
waters, all of these things are a part of this
Mohawk thinking, they are part of Mohawk definition.

1 and as long as these relationships of life remain
2 here in North America, then so does the reason
3 for a Mohawk nation remain here, and simply what
4 this generation is doing is coming out of a period
5 of extreme and arrogant racism against our people,
6 and we are simply taking up these things again
7 and reaffirming them and making them a part of
8 peoples lifestyles and community life styles, and
9 it is working, and I would like to say that the
10 reason that I went back home from New York City
11 and from Richmond College, which I never did gradu-
12 ate from, is because I saw, I found that it was
13 a useless end to the things that I was wanting to
14 involve my ownself in, because the situation that
15 our people is in on the reservation is a very bad
16 one, and anybody can go to any bookstore, pick up
17 any books and look at all the bad statistics that
18 Indian people have across North America, and the
19 only way --

20 THE COURT: Wait a minute now, I think,
21 Mr. Delibert, we are going too far.

22 BY MR. DELIBERT:

23 Q O.K., Mr. Cook, I have only one further question.
24 At the time when it is alleged that you did not
25 submit to induction into the armed forces of the

1 United States, did you do that because of your
2 belief that it was your duty as a Mohawk and your
3 right as a Mohawk not to so submit?

Q And was it in anyway because of fear of what might happen in the army for your personal safety?

8 A There was and is no fear in any of my life of what
9 might happen to me, I had been in a situation, a
10 difficult situation, there was no fear involved
11 there.

12 MR. DELIBERT: I have no further ques-
13 tions.

CROSS-INTERACTION

15 BY MR. MUMFORD:

16 Q Where and when were you born?

17 A I was born in Hanover, New Hampshire, when my
18 Father was a student at Dartmouth College there.

19 Q. And your father you say was in the armed services,
20 was he?

21 A. Mazz

Q. Who is an American citizen?

A Yes, he became an American citizen.

Q Is that prior to your birth or after?

²⁵ A. Ho Results on Australian citizens in 1924 when the

1 Congress passed that act that said that all native
2 American people have to be United States citizens.

3 Q During the summer of 1970, in July of 1970, were
4 you taking any courses at Richmond College?

5 A No I wasn't.

6 Q Had your prior semester terminated sometime in May
7 or June?

8 A Yes.

9 Q And you were anticipating picking up your studies
10 again in September, is that correct?

11 A Yes.

12 Q Were you paying any tuition during the summer
13 months, for the summer months?

14 A No.

15 Q You were living on the American portion of the
16 reservation, is that what your testimony was, that
17 you registered for the draft, for the Selective
18 Service?

19 A When I was 18?

20 Q Correct.

21 A I was at that time in school, and the place at
22 home where I was staying when I went home at that
23 time was on the American portion of the reservation
24 with my grandmother.

25 Q And you have also you said worked both in New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

72-CR-311

THOMAS COURTNEY COOK

APPEARANCES:

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MICHAEL N. POLLET

JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

The facts of this case, insofar as they are pertinent for this decision, begin when defendant registered with the selective service system in May 1966. He was at that time classified IV-D (divinity student) while attending Our Lady of Hope Seminary in Newburgh, New York. In August 1968, he informed his local board of a termination in his seminary study. The board changed his classification to I-A until October 1968 when, upon entrance into Richmond College of the City University of the City of New York, defendant received a student deferment (II-S). Initially, his expected year of graduation was June 1970, but due to a change in his major subject of study, he had to extend his graduation date until June 1972 to accumulate the necessary credit for this new program of study. The local board was informed of this development and on July 22, 1970, ended his II-S deferment and reclassified him I-A. On August 24, 1970, an order to report for induction was mailed to defendant but ignored according to the allegations in the instant indictment.

This case, by defendant's motion to dismiss the indictment herein, again presents an issue which has produced judicial disagreement as it concerns the meaning of the phrase "during his academic year" as set forth in the regulation of the selective service system I-S classification, 32 C.F.R. § 1622.15(b) (repealed 1973). In this case, the issue turns on whether August 24, 1970 [the date of defendant's induction order; see Marsano v. Laird, 412 F. 2d 65, 68 (2d Cir. 1969); McLain v. Selective Service Local Bd. 17, 433 F. 2d 737, 742 (8th Cir. 1971)] was within or during his (defendant's) academic year. If it was then defendant was entitled to have his induction order "cancelled" at that time [later regulations mandated "postponement", see United States v. Pickett, 460 F. 2d 1255, 1256 n. 6 (8th Cir. 1972)]. The induction order in such a case would have been legally premature and thus would not have supported the instant indictment. United States v. Rundle, 413 F. 2d 329, 332 (8th Cir. 1969). On the other hand, if the induction order was issued outside "his academic year" then defendant was entitled to no further delay in his induction and the instant indictment must stand. United States v. Pickett, *supra*.

There are two leading cases which present the conflicting judicial interpretations regarding the applicability of the definition of "during his academic year" in Section 1622.15(b) when determining a registrant's right to a I-S classification. One school of thought, represented by District Judge Lloyd F. MacMahon, argues for an objective definition of "academic year", meaning for all student registrants who would be eligible, "the 12 month period following the beginning of his course of study." *Walsh v. Local Board No. 10*, 305 F. Supp. 1274 (S.D. N.Y. 1969). Judge MacMahon reasoned that inasmuch as neither the statute nor the regulations contain the slightest suggestion that "academic year" is to be defined differently for a I-S (C) than for a II-S classification, then the express definition of the II-S classification in Section

1622.25(b) must be applicable for the time period calculation for I-S (C) of Section 1622.15(b). The wording of these sections, although similar, is not identical.

The case of Peller v. Selective Serv. Local Bd. No. 65, 313 F. Supp. 100 (N.D. Ind. 1970) presents a substantially different reading of the phrase. District Judge Beamer there also argues persuasively, but for a subjective definition. By emphasizing the word "his" in the statutory phrase, Judge Beamer would relate "academic year" to the educational cycle of the particular registrant, i.e., the time the registrant is actually engaged in the educational process.

Both of these opinions argue and reason well for their respective interpretations of an admittedly ambiguous regulation with an unfortunate omission of the precise meaning of this phrase. I have previously written on this issue, although under facts which did not present the question in as clear and abstract way as the instant case. See Marowitz v. Selective Serv. Local Bd. No. 12, Dk. No. 72-CV-467 (N.D. N.Y. April 13, 1973) (unreported). I, therefore, see little need in attempting to improve on the decisions of Judge MacMahon or Judge Beamer on the point, except to give a few reasons for my preference for Judge Beamer's analysis.

I do sympathize with the desire to have a simple and concrete definition for the I-S classification as provided for in the II-S classification [§ 1622.25(b)], but the fact that none has been provided might indicate that the classification, given its purpose, is not amenable to having one. Moreover, it is unusual to construe a regulation by extracting a definition from another regulation without any indication or reference that this was the intent of Congress. As stated in Marowitz, my preference for defining "during his academic year" in the relative sense is fundamentally based upon my perception of the intent of Section 1622.15, and as I interpret it, the practical realities surrounding its operation. It seems pointless to me, in weighing every interest whether

it is the public, government or registrant, to pull a student from school while he is actually engaged in expending his educational resources, i.e., studying, paying tuition, and being emotionally geared-up for the educational process. Nowak v. Collins, 437 F. 2d 1303, 1307 (3rd Cir. 1971). The government's need for the registrant to enter the military is not so immediate that it cannot wait a short time (usually a matter of a few months -- except in the registrant's last academic year) for a student to complete a cycle or sub-cycle of the educational process. The basic notion here is similar to allowing 30 days in the induction order before reporting to duty; it gives a reasonable time to put personal affairs in order and prepare for the impending change in lifestyle. On the other hand, I can see no practical purpose in choosing 12 months in every I-S case. For example, if a registrant, as defendant here, has finished a cycle of his education in June, what benefit accrues either to him or the selective service system in allowing deferment during an educationally inactive summer?

There is necessarily a need for flexibility and an examination of each registrant's case before being able to know when a cycle or sub-cycle terminates. As here, the academic year usually runs from September to June, but it might run from January to January (see e.g., United States v. Wood, 329 F. Supp. 68, 71 (D. N.H. 1971) or be based on trimesters instead of semesters. Thus it is not practical, in terms of the purposes of § 1622.15 for "academic year" to be one fixed amount of time, nor can I understand why, if academic year does mean 12 months, Congress simply didn't use the word "year" in § 1622.15(b) which would unambiguously denote 12 months. There are also the words "during" and "his" in the phrasing of § 1622.15 (not found in § 1622.25) which in my judgment must reasonably be given a descriptive function relating, I believe, to the particular registrant.

Nevertheless, while Judge MacMahon's argument has merit

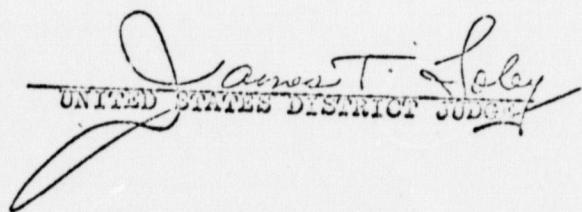
and has been followed, see United States v. Rothfelder, 338 F. Supp. 1164, 1167 (W.D. Mich., S.D. 1972), appeal dismissed 474 F. 2d 606 (6th Cir. 1973), cert. den. 413 U.S. 922 (1973), my own perception that the classifications II-S and I-S serve different purposes (United States ex rel. Vacca v. Commanding Officer, etc., 446 F. 2d 1079, 1083 n.5 (2d Cir. 1971) prevents me from accepting that analysis of the language and purposes of the separate regulations for different classifications and purposes. I choose instead to follow Peller and my previous reasoning as it applies to the problem here in Marowitz, supra; see also, McLain v. Selective Service Local Bd. No. 47, supra, 439 F. 2d at 741-742; Nestor v. Hershey, 425 F. 2d 504, 513 (D.C. Cir. 1969).

Accordingly, I find that defendant's induction order of August 24, 1970, was not issued during "his academic year" and the defendant was not entitled therefore to a I-S (C) deferment. Consequently, the indictment must stand and the defendant's motion to dismiss it is hereby denied.

It is so Ordered.

Dated: January 24, 1974

Albany, New York


UNITED STATES DISTRICT JUDGE

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U. S. DISTRICT COURT
N. D. OF N. Y.
FILED A44

APR 5 1974

AT 10 O'CLOCK M.
J. R. SCULLY, Clerk
ALBANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

72-CR-311

THOMAS COURTNEY COOK

APPEARANCES:

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MICHAEL N. POLLET
STEVEN DELIBERT

JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

Defendant is charged with failure to report for and submit to induction on or about September 22, 1970, in violation of the Military Service Act of 1967, 50 U.S.C. Appendix, Section 462. (Indictment 72-CR-311). This case was tried before me, the right to a jury being waived by defendant, yesterday, April 4, 1974.

The trial was quite brief with the government calling only one witness and only the defendant testifying in his own behalf. The government placed defendant's Selective Service File in evidence which showed that an induction order was issued to defendant, who did receive it and indeed proceeded to return it to the board claiming it was illegally issued for reasons discussed more fully below.

Defendant moved for a judgment of acquittal pursuant to Fed. R. Crim. Pro. 29 at the close of the government's proof and also at the close of the trial, and I reserved decision on these motions. This motion is based upon two legal arguments: (1) that defendant

was entitled to a 1-S classification from his draft board that would have deferred induction and failure to so classify him would invalidate his induction order and the instant indictment; and (2) that defendant is not subject to service under the Military Service Act of 1967 because he is a member of the Six Nations of Indians ("Iroquois Confederacy"), residing in a Canadian reservation and therefore is not a citizen of the United States.

The first point was previously raised upon a motion to dismiss the indictment which was denied by my Memorandum-Decision and Order of January 24, 1974 on the authority of Peller v. Selective Serv. Local Bd. No. 65, 313 F. Supp. 100 (N.D. Ind. 1970) and Marowitz v. Selective Serv. Local Bd. No. 12, Dk. No. 72-CV-467 (N.D. N.Y. April 13, 1973) (unreported). The presentation of facts at this trial has not revealed any reason to change this ruling and thus this argument provides in my judgment no new grounds for acquittal at this trial stage.

The second ground for acquittal is similarly without legal merit. In the leading case, Ex Parte Green, 123 F. 2d 862 (2d Cir. 1941), cert. den. sub nom. Green v. McLaren, 316 U.S. 668 (1942), the Court of Appeals, Second Circuit, held that members of the Six Nations of Indians were subject to the Selective Training Act of 1940. This case has been reaffirmed not only by the Second Circuit, United States v. Forness, 125 F. 2d 928, 941 n. 38 (2d Cir. 1942); Petition of Moser, 182 F. 2d 734 (2d Cir. 1950); but also by virtually every court that has faced a similar question. In Albany v. United States, 152 F. 2d 266 (6th Cir. 1945), the defendant was a Canadian citizen, born in Canada, who had registered under the Canadian Military Service Act and was exempted thereunder. The Sixth Circuit Court of Appeals, following Ex Parte Green, *supra*, affirmed the judgment of conviction on his failure to report for induction, citing Ex Parte Green. These two cases have been followed by more recent decisions on the Military Selective Service Act of 1967, the basis

for the instant indictment. Williams v. United States, 403 F. 2d 704 (9th Cir. 1968) (per curiam), cert. den. 394 U.S. 959 (1969); United States v. Craig, 353 F. Supp. 121, 123 (D. Minn. 1973); United States v. Neptune, 337 F. Supp. 1028 (D. Conn. 1972).

Defendant admitted in his testimony at the trial that his father was a citizen of the United States prior to his birth in Hanover, N.H. In light of these facts and the overwhelming precedent, I feel compelled to reach the same conclusion as the Second Circuit in Ex Parte Green:

We find ourselves compelled to decide against Green, although, because of the historic relations of the United States to the Indians, we reach that conclusion most reluctantly We agree that, in the light of the history of the dealings between the United States and Green's tribe, those statutes should be construed most favorably toward him. But we have taxed our ingenuity in vain to find any interpretation which would result in a decision in his favor.

Id., 123 F. 2d at 863-64.

Therefore, the defendant's motion for a judgment of acquittal on legal grounds is denied.

The only remaining question is whether defendant was proven beyond reasonable doubt to have intentionally and wilfully refused to report for induction. I find the evidence sufficient to so establish his guilt of this charge. Given his correspondence with the local board, especially his letter of September 15, 1970 (Government Exhibit I, Item 63) in which he returned his order to report for induction and requested that the board cancel their order, there is no doubt that he ignored the order with full knowledge of his acts. Defendant admitted sending this letter at the trial. In the letter he returned the induction order and asserted the same basis for refusal to comply, namely, that he is a citizen of the Iroquois Confederacy and not the United States. It is thus beyond reasonable doubt that defendant both knew of his obligation under 50 U.S.C.

Appendix, Section 462, and chose to ignore it. The requisite criminal intent is clearly present and is proven beyond a reasonable doubt. I, therefore, find defendant guilty as charged.

My findings of fact are contained herein [Fed. R. Crim. Pro. 23(c)]. I hereby direct a presentence investigation be made. The attorneys for the defendant should contact Chief Probation Officer Frank T. Waterson, Federal Post Office Building, Albany, New York, to arrange for the interview of defendant. The defendant has impressed me with the sincerity of his beliefs by his appearance and testimony and his release upon his own recognizance shall continue until notified to appear for sentencing by the United States Attorney's Office.

It should be noted that it was brought to my attention subsequent to the trial that defendant's 26th birthday is April 7, 1974, just two days from the date of this decision. After consultation with both the Assistant United States Attorney Brian F. Mumford, and the attorney for defendant, it was agreed that the 10 days previously allowed by me to brief the legal questions on the motion for a judgment of acquittal should be dispensed with in order to be able to consider defendant for treatment as a Young Adult Offender (18 U.S.C. § 4209) under the Federal Youth Corrections Act (18 U.S.C. §§ 5005-5024). Under these statutes a "conviction", or a "judgment on a verdict or finding of guilty" [18 U.S.C. 5006(h)] must be rendered prior to a defendant's 26th birthday. 18 U.S.C. § 4209; see United States v. Kleinzhaler, 306 F. Supp. 311, 313 (E.D. N.Y. 1969); also, Youth Corrections Act, 11 A.L.R. Fed. 499, 544. Thus it is necessary to expedite and issue this decision prior to April 7, 1974, so as not to lose the availability of this optional sentencing procedure.

The defendant is found guilty as charged in the indictment. Sentencing shall occur on a date noticed by the United States

Attorney's office.

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It is so Ordered.

Dated: April 5, 1974

Albany, New York

Jane T. Shiley
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

v.
Index No. 72-Cr.-311

THOMAS COURNEY COOK,

NOTICE OF APPEAL

Defendant.

NOTICE IS HEREBY GIVEN that THOMAS COURNEY COOK, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 26th day of May, 1974.

Dated: Albany, New York
May 20, 1974

Marvin H. Rapaport

Michael W. Pellet

Stephen Delibert

Steve Delibert

ATTORNEY FOR DEFENDANT

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Tel.: (212) 735-2700

Titled w/ Clerk Scully 5/20/74 1-pm SD

